

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

08/24/2001

CLERK OF THE COURT  
FORM L000

HONORABLE MICHAEL D. JONES

M. MINKOW  
Deputy

LC 2001-000088

FILED: \_\_\_\_\_

STATE OF ARIZONA

CRAIG L JENNINGS

v.

TIMOTHY OCONNOR LONG

JOHN PHEBUS

REMAND DESK CR-CCC  
SURPRISE MUNICIPAL COURT

MINUTE ENTRY

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Sec. 16, and A.R.S. Sec. 12-124(A).

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the Surprise City Court and the memorandum submitted by Appellant.

The only issue raised by Appellant concerns the trial judge's denial of Appellant's Motion for Judgment of Acquittal pursuant to Rule 20, Arizona Rules of Criminal Procedure. A judgment of acquittal is only required when there is no "substantial evidence to warrant a conviction."<sup>1</sup> When reviewing the sufficiency of the evidence, an appellate court must not reweigh the evidence to determine if it would reach the same conclusion as the original trier of fact.<sup>2</sup> Evidence should be

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<sup>1</sup> State v. Doss, 192 Ariz. 408, 966 P.2d 1012 (App. 1998).

<sup>2</sup> State v. Guerra, 161 Ariz. 289, 778 P.2d 1185 (1989); State v. Mincey, 141 Ariz. 425, 687 P.2d 1180, cert. denied, 469 U.S. 1040, 105 S.Ct.521, 83 L.Ed.2d 409 (1984); State v. Brown, 125 Ariz. 160, 608 P.2d 299 (1980).

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viewed in a light most favorable to sustaining a conviction and all reasonable inferences will be resolved against the Defendant.<sup>3</sup> If there are conflicts in the evidence, an appellate court must resolve such conflicts in favor of sustaining the verdict and against the defendant.<sup>4</sup> The Arizona Supreme Court has explained in State v. Tison<sup>5</sup> that "substantial evidence" means:

More than a scintilla and is such proof that a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.<sup>6</sup>

In this case, Appellant complains that the only affirmative evidence of guilt which could constitute "substantial evidence" were the hearsay statements of the State's witnesses contradicting their testimony in open court. This "hearsay impeachment evidence" was nevertheless evidence properly before the trial judge. The trial judge simply chose to believe that evidence over the testimony from those witnesses in court. It is not for this Court to second guess that "credibility call" by the trial judge. Clearly, substantial evidence was presented to the trial judge in support of the charges for which Appellant was convicted. IT IS THEREFORE ORDERED affirming the judgments of guilt and sentences imposed. IT IS FURTHER ORDERED remanding this matter back to the Surprise City Court for all future proceedings.

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<sup>3</sup> State v. Guerra, supra; State v. Tison, 129 Ariz. 546, 633 P.2d 355 (1981), cert. denied, 459 U.S. 882, 103 S.Ct.180, 74 L.Ed.2d (1982).

<sup>4</sup> In Re Estate of Shumway, 197 Ariz. 57, 3 P.3d 977, review granted in part, opinion vacated in part 9 P.3d 1062; Ryder v. Leach, 3 Ariz. 129, 77 P.490 (1889).

<sup>5</sup> SUPRA.

<sup>6</sup> Id. At 553, 633 P.2d at 362.